

REMARKS

Applicants respectfully request further examination and reconsideration in view of the instant response. Claims 1-6, 10-19, and 21-25 remain pending in the case. Claims 1-6, 10-19, and 21-25 are rejected. Claims 1-6 are amended herein. No new matter has been added.

35 U.S.C. §101

In previous Office Actions received for the present application, specifically the Office Actions mailed on January 26, 2005 and July 14, 2005, Claims 1-6 were rejected under 35 U.S.C. § 101 as the Examiner asserts that the claimed invention was directed to non-statutory subject matter. Applicants made numerous amendments to Claims 1-6 to overcome the rejection under 35 U.S.C. § 101.

In the previous rejections under 35 U.S.C. § 101, the Examiner asserted that the rejected claims fail to satisfy a test of whether an invention is within the “technological arts.” In particular, the Examiner asserted that by failing a separate test as to whether the invention is within the “technological arts,” the invention as claimed in Claims 1-6 was not directed towards statutory subject matter.

Applicants respectfully submit that the test for patentable subject matter under 35 U.S.C. §101 does not include a separate “technological arts” test (ex

parte Lundgren, Board of Patent Appeals and Interferences, Appeal No. 2003-2088, 9/28/05). The court in *ex parte Lundgren* held that “[w]e do not view the court’s statement in Musgrave in regard to the technological arts to have created a separate “technological arts” test in determining whether a process is statutory subject matter” (Id., emphasis in original). In particular, the court held “that there is currently no judicially recognized separate “technological arts” test to determine patent eligible subject matter under § 101” (Id., emphasis added). The court also declined to create such a test (Id.).

Applicants respectfully submit that the recent BPAI decision of *ex parte Lundgren* clearly indicates that there is no test to determine whether the invention is within the “technological art” in order to be eligible for a patent. Applicants have amended Claims 1-6 herein, removing the previous amendments made for the purpose of overcoming the previous rejections under 35 U.S.C. § 101. Accordingly, Applicants respectfully submit that Claims 1-6 are directed toward patentable subject matter, and are not subject to a rejection under 35 U.S.C. § 101.

35 U.S.C. §103(a)

Claims 1, 2, 10, 11, 16, 17, 22 and 23

Claims 1, 2, 10, 11, 16, 17, 22 and 23 are rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent 6,029,140 by Martin et al., hereinafter referred to as the “Martin” reference, in view of United States

Patent 5,414,754 by Pugh et al., hereinafter referred to as the "Pugh" reference.

Applicants have reviewed the cited reference and respectfully submit that the present invention as recited in Claims 1, 2, 10, 11, 16, 17, 22 and 23 is not rendered obvious by Martin in view of Pugh.

Applicants respectfully direct the Examiner to independent Claim 1 that recites that an embodiment of the present invention is directed to (emphasis added):

A method of addressing problems associated with customer orders, comprising:
receiving an order for delivery of a product placed by a customer;
initiating a workflow process to handle delivery of product of the order to the customer;
monitoring the workflow process to detect any problems related to the delivery of the order;
notifying a human call center agent if a problem related to delivery of the product to the customer occurs during the processing of the order which enables the human call center agent to proactively contact the customer; and
proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem.

Independent Claims 10, 16 and 22 recite similar limitations. Claim 2 that depends from independent Claim 1, Claim 11 that depends from independent Claim 10, Claim 17 that depends from independent Claim 16, and Claim 23 that depends from independent Claim 22 provide further recitations of the features of the present invention.

Applicants respectfully submit that Martin and the claimed embodiments are very different. Applicants understand Martin to teach a system for setting and reporting product delivery dates (Abstract). The system of Martin is operable to allow a human order scheduler to reschedule delivery of a customer order if the supplier is unable to meet a preferred or requested date. In particular, the rescheduling is performed prior to communicating the new delivery date to the customer, and without interacting with the customer. Applicants respectfully assert that Martin does not teach, describe or suggest a method of addressing problems associated with customer orders including "proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem," as claimed (emphasis added).

Applicants understand Martin to teach an online delivery tracking system. A customer preferences database is maintained in which a delivery and reporting preferences for individual customers are stored (col. 2, lines 47-51). The customer preferences database includes preferred early and late delivery limits, preferred performance measurement species, and desired advance delivery times (col. 2, lines 56-59), as well as whether a user will allow rescheduling of shipments (col. 3, lines 24-28). The customer preferences database includes information collected over a long-term basis (col. 4, lines 25-27).

The system of Martin is operable to allow a human order scheduler to reschedule delivery of a customer order if the supplier is unable to meet a preferred or requested date (col. 3, line 65 through col. 4, line 50). The delivery is rescheduled “based on the customer’s own rules” (col. 4, lines 25-27). These rules are maintained in the customer preferences database (col. 4, lines 27-31). In particular, the rescheduling is performed without interacting with the customer in response to detecting the need for rescheduling. Rather, the rescheduling is based on previously collected information stored in the customer preferences database. Applicants understand the purpose of the system of Martin to eliminate the need for customer contact by allowing for the rescheduling of item delivery without contacting or interacting with the customer. Once the delivery has been rescheduled, the expected delivery date is communicated to the customer (col. 4, lines 50-52). Even then, Martin does not teach, describe or suggest that the human order scheduler interacts with the customer to communicate the expected delivery date.

In contrast, embodiments of the claimed invention are directed towards a method of addressing problems associated with customer orders including “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem” (emphasis added). As described in the present specification, for any condition which causes a transaction to fail, the call center is automatically notified. A call center representative researches the problem and takes steps to fix the problem.

The customer is then contacted so that the call center agent can resolve the problem by interacting with the customer. In particular, while steps may be taken to resolve the problem, the problem is not ultimately resolved until the call center agent interacts with the customer.

Applicants respectfully assert that Martin does not teach, describe or suggest a method of addressing problems associated with customer orders including “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” as claimed. In contrast, Martin teaches a system for rescheduling delivery of a customer order without interacting with a customer. Moreover, the customer is not contacted until the delivery has been rescheduled. By teaching that the delivery is rescheduled without interaction with the customer in response to the need for rescheduling, Martin teaches away from “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” as claimed (emphasis added).

Furthermore, the combination of Martin and Pugh fails to teach or suggest the claimed embodiments because Pugh does not overcome the shortcomings of Martin. Applicants understand Pugh to teach a system for providing proactive call services utilizing remote monitors. In particular, Pugh does not teach, describe or suggest "proactively establishing a telephonic interaction between

said human call center agent and the customer in response to the problem to resolve the problem," as claimed (emphasis added).

Moreover, the combination of Martin and Pugh fails to teach or suggest the present invention as claimed because the combination of Martin and Pugh does not satisfy the requirements of a *prima facie* case of obviousness. In order to establish a *prima facie* case of obviousness, the prior art must suggest the desirability of the claimed invention (MPEP 2142). In particular, "if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious" (emphasis added) (MPEP 2143.01; *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Moreover, "[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed amendment" (emphasis added) (MPEP 2143.01; *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

As described above, Applicants understand Martin to teach a system for rescheduling delivery of a customer order without interaction with the customer in response to the need for rescheduling. Specifically, Applicants understand that the intended purpose of Martin is to provide for rescheduling delivery without interacting with the customer in response to determining the need for rescheduling. Moreover, the customer is not contacted until after the

rescheduled delivery date has been set. By teaching that the delivery is rescheduled without interaction with the customer in response to the need for rescheduling, Martin teaches away from “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” as claimed (emphasis added).

In particular, the principle of operation of Martin is to perform rescheduling based on stored customer information and without interacting with the customer based on the need for rescheduling. Applicants respectfully assert that interacting with a customer to reschedule delivery would render Martin inoperable for its intended purpose. Therefore, Applicants respectfully assert that there is no suggestion to modify the teachings of Martin and Pugh as suggested by the Examiner, as the teaching of Martin teach away from the operation as suggested by the Examiner.

In view of the claim limitations of “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” not being shown or suggested in Martin in view of Pugh, in combination with the above arguments, Applicants respectfully submit that independent Claims 1, 10, 16 and 22 overcome the cited reference and are therefore allowable over Martin in view of Pugh. Therefore, Applicants respectfully submit that Martin in view of Pugh also does not teach or suggest the additional claimed features of the present invention as recited in

Claim 2 that depends from independent Claim 1, Claim 11 that depends from independent Claim 10, Claim 17 that depends from independent Claim 16, and Claim 23 that depends from independent Claim 22. Applicants respectfully submit that Claims 2, 11, 17 and 23 also overcome the rejection under 35 U.S.C. § 103(a) as these claims are dependent on allowable base claims.

Claims 3, 12, 18 and 24

Claims 3, 12, 18 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Pugh, further in view of United States Patent 6,328,207 by Gregoire et al., hereinafter referred to as the “Gregoire” reference. Claim 3 depends from independent Claim 1, Claim 12 depends from independent Claim 10, Claim 18 depends from independent Claim 16, and Claim 24 depends from independent Claim 22. Applicants have reviewed the cited references and respectfully submit that the present invention as recited in Claims 3, 12, 18 and 24 is not rendered obvious by Martin in view of Pugh, further in view of Gregoire.

As described above in the discussion of the 35 U.S.C. § 103(a) rejection of Claims 1, 2, 10, 11, 16, 17, 22 and 23, Applicants respectfully assert that Martin in view of Pugh does not teach, describe or suggest a method of addressing problems associated with customer orders including “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” as claimed

(emphasis added). In contrast, Martin teaches a system for rescheduling delivery of a customer order without interacting with a customer. By teaching that the delivery is rescheduled without interaction with the customer in response to the need for rescheduling, Martin teaches away from such a configuration.

Moreover, the combination of Martin in view of Pugh, further in view of Gregoire fails to teach or suggest the present invention as claimed because Gregoire does not overcome the shortcomings of Martin in view of Pugh. Gregoire, alone or in combination with Martin in view of Pugh, does not show or suggest a method of addressing problems associated with the delivery of a product of customer orders, as claimed. Applicants understand Gregoire to teach a method and apparatus for automated cashing of checks. Specifically, Gregoire does not teach, describe or suggest a method of addressing problems associated with customer orders including “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” as claimed.

In view of the claim limitations of “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” not being shown or suggested in Martin in view of Pugh, further in view of Gregoire, in combination with the above arguments, Applicants respectfully submit that independent Claims 1, 10, 16 and 22 overcome the cited reference and are therefore allowable over Martin in view

of Pugh, further in view of Gregoire. Therefore, Applicants respectfully submit that Martin in view of Pugh, further in view of Gregoire also does not teach or suggest the additional claimed features of the present invention as recited in Claim 3 that depends from independent Claim 1, Claim 12 that depends from independent Claim 10, Claim 18 that depends from independent Claim 16, and Claim 24 that depends from independent Claim 22. Applicants respectfully submit that Claims 3, 12, 18 and 24 also overcome the rejection under 35 U.S.C. § 103(a) as these claims are dependent on allowable base claims.

Claims 4, 13, 19 and 25

Claims 4, 13, 19 and 25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Pugh, further in view of Official Notice. Claim 4 depends from independent Claim 1, Claim 13 depends from independent Claim 10, Claim 19 depends from independent Claim 16, and Claim 25 depends from independent Claim 22. Applicants have reviewed the cited references and respectfully submit that the present invention as recited in Claims 4, 13, 19 and 25 is not rendered obvious by Martin in view of Pugh, further in view of Official Notice.

As described above in the discussion of the 35 U.S.C. § 103(a) rejection of Claims 1, 2, 10, 11, 16, 17, 22 and 23, Applicants respectfully assert that Martin in view of Pugh does not teach, describe or suggest a method of addressing problems associated with customer orders including “proactively”

establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem," as claimed (emphasis added). In contrast, Martin teaches a system for rescheduling delivery of a customer order without interacting with a customer. By teaching that the delivery is rescheduled without interaction with the customer in response to the need for rescheduling, Martin teaches away from such a configuration.

Moreover, the combination of Martin in view of Pugh, further in view of Official Notice fails to teach or suggest the present invention as claimed because Official Notice does not overcome the shortcomings of Martin in view of Pugh. Official Notice, alone or in combination with Martin in view of Pugh, does not show or suggest a method of addressing problems associated with the delivery of a product of customer orders, as claimed. Specifically, Official Notice does not teach, describe or suggest a method of addressing problems associated with customer orders including "proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem," as claimed.

In view of the claim limitations of "proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem," not being shown or suggested in Martin in view of Pugh, further in view of Official Notice, in combination with the above arguments, Applicants respectfully submit that independent Claims 1, 10, 16 and

22 overcome the cited reference and are therefore allowable over Martin in view of Pugh, further in view of Official Notice. Therefore, Applicants respectfully submit that Martin in view of Pugh, further in view of Official Notice also does not teach or suggest the additional claimed features of the present invention as recited in Claim 4 that depends from independent Claim 1, Claim 13 that depends from independent Claim 10, Claim 19 that depends from independent Claim 16, and Claim 25 that depends from independent Claim 22. Applicants respectfully submit that Claims 4, 13, 19 and 25 also overcome the rejection under 35 U.S.C. § 103(a) as these claims are dependent on allowable base claims.

Claims 5 and 14

Claims 5 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of Pugh, further in view of United States Patent 6,530,518 by Krichilsky et al., hereinafter referred to as the "Krichilsky" reference. Claim 5 depends from independent Claim 1 and Claim 14 depends from independent Claim 10. Applicants have reviewed the cited references and respectfully submit that the present invention as recited in Claims 5 and 14 is not rendered obvious by Martin in view of Pugh, further in view of Krichilsky.

As described above in the discussion of the 35 U.S.C. § 103(a) rejection of Claims 1, 2, 10, 11, 16, 17, 22 and 23, Applicants respectfully assert that Martin in view of Pugh does not teach, describe or suggest a method of

addressing problems associated with customer orders including “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” as claimed (emphasis added). In contrast, Martin teaches a system for rescheduling delivery of a customer order without interacting with a customer. By teaching that the delivery is rescheduled without interaction with the customer in response to the need for rescheduling, Martin teaches away from such a configuration.

Moreover, the combination of Martin in view of Pugh, further in view of Krichilsky fails to teach or suggest the present invention as claimed because Krichilsky does not overcome the shortcomings of Martin in view of Pugh. Krichilsky, alone or in combination with Martin in view of Pugh, does not show or suggest a method of addressing problems associated with the delivery of a product of customer orders, as claimed. Applicants understand Krichilsky to teach a method for viewing product delivery information. Specifically, Krichilsky does not teach, describe or suggest a method of addressing problems associated with customer orders including “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” as claimed.

In view of the claim limitations of “proactively establishing a telephonic interaction between said human call center agent and the customer in response to the problem to resolve the problem,” not being shown or suggested in Martin

in view of Pugh, further in view of Krichilsky, in combination with the above arguments, Applicants respectfully submit that independent Claims 1 and 10 overcome the cited reference and are therefore allowable over Martin in view of Pugh, further in view of Krichilsky. Therefore, Applicants respectfully submit that Martin in view of Pugh, further in view of Krichilsky also does not teach or suggest the additional claimed features of the present invention as recited in Claim 5 that depends from independent Claim 1 and Claim 14 that depends from independent Claim 10. Applicants respectfully submit that Claims 5 and 14 also overcome the rejection under 35 U.S.C. § 103(a) as these claims are dependent on allowable base claims.

CONCLUSION

Based on the arguments presented above, Applicants respectfully assert that Claims 1-6, 10-19 and 22-25 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these Claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,
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